

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>JERRY LEWIS DEDRICK,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIV-05-575-R</b>
	)	
<b>JOSEPH SCIBANA,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER**

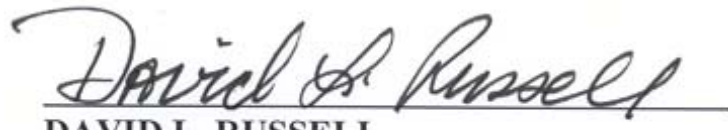
Before the Court is the Report and Recommendation of United States Magistrate Judge Robert E. Bacharach entered June 16, 2005 and Petitioner's objection to the Report and Recommendation filed June 24, 2005. The Magistrate Judge recommended that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 be summarily dismissed and not recharacterized as a second or successive motion pursuant to 28 U.S.C. § 2255. Petitioner objects and asks the Court to recharacterize his petition as a Section 2255 motion and transfer the motion to the United States District Court for the Western District of Texas.

As the Magistrate Judge indicated, because Petitioner has already filed a § 2255 motion, Petitioner is required to obtain authorization from the Fifth Circuit Court of Appeals to file a second or successive § 2255 motion. *See* 28 U.S.C. § 2255. Since Petitioner, knowing this, desires the recharacterization of his petition as a § 2255 motion and its transfer to the Fifth Circuit Court of Appeals, the Court does so.

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge is REJECTED, the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241

is recharacterized as a second or successive § 2255 motion and TRANSFERRED to the Fifth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631.

**IT IS SO ORDERED this 30<sup>th</sup> day of June, 2005.**

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE